

**Natural Resources Advisory Council
April 14, 2010**

Consideration for approval of a new non-rule policy governing prospecting in Indiana that will provide guidelines to prospectors and DNR staff of the following:

- (1) locations where prospecting is less likely to impact endangered species, including mussels,
- (2) clarify the permission required to conduct prospecting on navigable and non-navigable waterways, including those on DNR properties, and
- (3) provide information on the proper disposal of lead that is found while prospecting.

Prospecting is defined in 312 IAC 6-2-6.8 as “activities conducted in preparation for or to remove hard mineral resources, including (1) Gold, (2) Platinum, (3) Silver, (4) Lead, (5) Copper, (6) Diamonds and other gemstones, and (7) Other similar materials.” New rules in 312 IAC 6 and 312 IAC 10 governing prospecting took effect in December of last year. However, several prospectors asked for additional guidance on obtaining permission from affected riparian owners along both navigable and non-navigable waterways, including DNR properties.

This policy also includes bodies of water where some endangered species, including endangered species of mussels, are likely to be found. These locations are included to help guide prospectors to waterways where prospecting would be less likely to result in the taking (including the collection) of an endangered species or mussel, which is prohibited in the rule.

Prospectors have also inquired about the proper disposal of lead (especially from lead sinkers) that they find while prospecting, and information is included in this document to direct them to locations where the lead can be properly disposed of.

The DNR is requesting approval of this new non-rule policy for consideration by the Natural Resources Commission.

Natural Resources Commission
Information Bulletin #62
June 1, 2010

Subject: Prospecting in Indiana

1. Purpose

The Navigable Waterways Act (IC 14-29-1-8), Flood Control Act (IC 14-28-1-5) and rules adopted at 312 IAC 6 and 312 IAC 10 govern prospecting in waterways in Indiana. Prospecting is defined in 312 IAC 6-2-6.8 as "activities conducted in preparation for or to remove hard mineral resources, including (1) Gold, (2) Platinum, (3) Silver, (4) Lead, (5) Copper, (6) Diamonds and other gemstones, and (7) Other similar materials." Rules adopted at 312 IAC 8 govern activities on properties owned or controlled by the Department of Natural Resources (DNR) and require a permit for a person to conduct prospecting on a waterway that runs through a DNR property. This policy will provide guidance to both prospectors and DNR staff on locations where prospecting is less likely to impact endangered species and mussels, clarify the permission required to conduct prospecting on navigable and non-navigable waterways, and provide information on the proper disposal of lead that is found while prospecting.

2. Definitions

The list of navigable waterways can be found on the Natural Resources Commission's website at: <http://www.in.gov/nrc/2375.htm> or a written request can be sent to the DNR, Division of Fish and Wildlife Environmental Unit, 402 West Washington Street, Room W273, Indianapolis, IN 46204.

"Affected riparian owners" include property managers of properties owned by federal, state, or local government agencies and landowners that live along a waterway whose use or enjoyment of the waterway is affected by the presence of a prospector.

3. DNR Properties

Written permission must be obtained from the property manager or the property manager's designee before prospecting in waterways that are located along or through properties managed by the Department. On a property managed by the DNR, only panning would be authorized. To obtain written permission for prospecting on a DNR property, a departmental form must be completed and submitted to the property's office. Organized events by private organizations may be subject to special event fees in accordance with 312 IAC 8-2-15. Using reasonable discretion, the property manager is authorized to issue, condition, deny, suspend or revoke an application for prospecting. In the exercise of discretion, the following and other pertinent factors and principles apply:

- (a) Proximity to sensitive archaeological, historical, or ecological resources. Examples include caves or areas that contain relevant rare, threatened, or endangered species such as fish and mussels.
- (b) A scheduled resource management activity, such as a prescribed burn.

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(c) Any other factor reasonably consistent with proper use and protection of the particular DNR property, including implementation of a master plan.

A person who is aggrieved by a determination by the property manager may seek informal review from the division director. A determination by the division director is subject to administrative review under 312 IAC 3-1.

A person who wishes to conduct prospecting in a waterway that is not located along or through a DNR property must obtain written permission from an affected riparian owner in addition to the permission required to gain access to and from the waterway via private property.

3. Locations of Endangered Species

There are important bodies of water throughout the State of Indiana that contain endangered species of fish and/or mussels. Special care should be taken to prevent the taking (including the incidental capture) of any mussels and their shells or endangered species of fish, particularly in the locations listed below. Please note that this is not a complete list and endangered species, as well as mussels, may be found in other locations.

Body of Water	County
Big Creek	Posey county
East Fork White River	Daviess, Pike, Dubois, Martin, and Lawrence counties
Eel River	Cass, Miami, and Wabash counties
Fish Creek	Dekalb and Steuben counties
Elkhart River	Elkhart county
Hanna Creek	Union county
Kankakee River	Lake and Newton counties
Maumee River	Allen county
Mill Creek	Wabash county
Ohio River	Vanderburgh, Warrick, Spencer, Harrison, Jefferson, Dearborn, Floyd, and Switzerland counties
Patoka River	Dubois county
St. Mary's River	Allen county
St. Joseph River	Allen, Dekalb, Elkhart, and St. Joseph counties
Salamonie River	Huntington county
Sugar Creek	Johnson, Shelby, and Hancock counties
Wabash River	Carroll, Cass, Fountain, Gibson, Knox, Miami, Posey, Tippecanoe, Warren, and Wabash counties
Tippecanoe River	Tippecanoe, White, Carroll, Pulaski, Starke, Fulton, Marshall, and Kosciusko counties
White River (main stem)	Gibson, Pike and Knox counties
Whitewater River (inc. West Fork Whitewater River)	Dearborn and Franklin counties

4. Disposal of Lead

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Lead and other contaminants are routinely found by prospectors in waterways throughout Indiana. When lead is found in these waterways, it should be retained and taken to the nearest recycling center that accepts lead and other metals. A list of these recycling centers can be found by contacting the county's Solid Waste Management District; contact information is available online at: <http://www.in.gov/recycle/5758.htm> or call the Indiana Department of Environmental Management's Office of Pollution Prevention and Technical Assistance at 1-800-988-7901.

5. Contact Information

Questions can be directed to the Department of Natural Resources, Division of Fish and Wildlife:

Linnea Petercheff
Indiana DNR, Division of Fish and Wildlife
402 West Washington Street, Room W273
Indianapolis, IN 46204
E-mail: lpetercheff@dnr.in.gov
Phone: (317) 233-6527

TITLE 312 NATURAL RESOURCES COMMISSION

Final Rule
LSA Document #09-80(F)

DIGEST

Adds 312 IAC 6-2-3.8, 312 IAC 6-2-6.8, and 312 IAC 6-5-10 concerning navigable waters and 312 IAC 10-2-24.5, 312 IAC 10-2-33.3, and 312 IAC 10-5-11 concerning nonnavigable waters to address general licenses and individual licenses that govern prospecting for hard mineral resources. Effective 30 days after filing with the Publisher.

312 IAC 6-2-3.8; 312 IAC 6-2-6.8; 312 IAC 6-5-10; 312 IAC 10-2-24.5; 312 IAC 10-2-33.3; 312 IAC 10-5-11

SECTION 1. 312 IAC 6-2-3.8 IS ADDED TO READ AS FOLLOWS:

312 IAC 6-2-3.8 "Hard mineral resources" defined

Authority: IC 14-10-2-4; IC 14-28-1-5; IC 14-29-1-8

Affected: IC 14-28-1; IC 14-29-1

Sec. 3.8. "Hard mineral resources" means naturally occurring alluvial deposits of the following:

- (1) Gold.
- (2) Platinum.
- (3) Silver.
- (4) Lead.
- (5) Copper.
- (6) Diamonds and other gemstones.
- (7) Other similar materials.

(Natural Resources Commission; 312 IAC 6-2-3.8; filed Nov 3, 2009, 3:35 p.m.: 20091202-IR-312090080FRA)

SECTION 2. 312 IAC 6-2-6.8 IS ADDED TO READ AS FOLLOWS:

312 IAC 6-2-6.8 "Prospecting" defined

Authority: IC 14-10-2-4; IC 14-28-1-5; IC 14-29-1-8

Affected: IC 14-28-1; IC 14-29-1

Sec. 6.8. "Prospecting" refers to activities conducted in preparation for or to remove hard mineral resources.

(Natural Resources Commission; 312 IAC 6-2-6.8; filed Nov 3, 2009, 3:35 p.m.: 20091202-IR-312090080FRA)

SECTION 3. 312 IAC 6-5-10 IS ADDED TO READ AS FOLLOWS:

312 IAC 6-5-10 Prospecting in a navigable waterway

Authority: IC 14-10-2-4; IC 14-28-1-5; IC 14-29-1-8

Affected: IC 14-22-34-12; IC 14-28-1; IC 14-29-1; IC 14-29-3

Sec. 10. (a) This section governs prospecting in a navigable waterway that is subject to IC 14-28-1, IC 14-29-1, or IC 14-29-3.

(b) Unless otherwise provided in this section, a person must not engage in prospecting except as approved by the department in a written license.

(c) Without a written license or notice to the department, and except as provided in subsection (d), a person may engage in prospecting within the ordinary high watermark of a navigable waterway upon compliance with each of the following conditions:

- (1) Lawful ingress to and egress from the navigable waterway is obtained.
- (2) Written permission is obtained from any affected riparian owner.
- (3) Prospecting is performed exclusively by one (1) or a combination of the following processes:
 - (A) Without the use of equipment.
 - (B) With the use of nonmotorized equipment, such as a pan, sluice box, or pick and shovel.
 - (C) With the use of suction equipment, including motorized equipment, having a hand-operated nozzle that has an opening not larger than five (5) inches in diameter.
- (4) No mercury or other chemicals are used to assist with the recovery of hard mineral resources.
- (5) Activities occur exclusively between sunrise and sunset.
- (6) No mussels are taken as prescribed by 312 IAC 9-9-3.
- (7) No endangered species are taken as prescribed by IC 14-22-34-12.

(d) The following waterways do not qualify for prospecting under subsection (c) or under 312 IAC 10-5-11(c):

- (1) Big Blue River in Harrison County, Crawford County, and Washington County from river mile 57.2 downstream to river mile 11.5.
- (2) The East Branch of the Little Calumet River in Porter County.
- (3) Lake Michigan.
- (4) The Portage Burns Waterway in Porter County.
- (5) St. Joseph River in St. Joseph County from the Twin Branch Dam in Mishawaka downstream to the Michigan State Line.

(e) Nothing in this section is intended to modify the rights of riparian owners.

(Natural Resources Commission; 312 IAC 6-5-10; filed Nov 3, 2009, 3:35 p.m.: 20091202-IR-312090080FRA)

SECTION 4. 312 IAC 10-2-24.5 IS ADDED TO READ AS FOLLOWS:

312 IAC 10-2-24.5 "Hard mineral resources" defined

Authority: IC 14-10-2-4; IC 14-28-1-5; IC 14-29-1-8

Affected: IC 14-28-1; IC 14-29-1

Sec. 24.5. "Hard mineral resources" means naturally occurring alluvial deposits of the following:

- (1) Gold.
- (2) Platinum.
- (3) Silver.
- (4) Lead.
- (5) Copper.
- (6) Diamonds and other gemstones.
- (7) Other similar materials.

(Natural Resources Commission; 312 IAC 10-2-24.5; filed Nov 3, 2009, 3:35 p.m.: 20091202-IR-312090080FRA)

SECTION 5. 312 IAC 10-2-33.3 IS ADDED TO READ AS FOLLOWS:

312 IAC 10-2-33.3 "Prospecting" defined

Authority: IC 14-10-2-4; IC 14-28-1-5; IC 14-29-1-8

Affected: IC 14-28-1; IC 14-29-1

Sec. 33.3. "Prospecting" refers to activities conducted in preparation for or to remove hard mineral resources.

(Natural Resources Commission; 312 IAC 10-2-33.3; filed Nov 3, 2009, 3:35 p.m.: 20091202-IR-312090080FRA)

SECTION 6. 312 IAC 10-5-11 IS ADDED TO READ AS FOLLOWS:

312 IAC 10-5-11 Prospecting in a nonnavigable waterway

Authority: IC 14-10-2-4; IC 14-28-1-5;

Affected: IC 14-28-1; IC 14-29-1; IC 14-22-34-12

Sec. 11. (a) This section governs prospecting in a nonnavigable waterway that is subject to IC 14-28-1 and this article.

(b) Unless otherwise provided in this section, a person must not engage in prospecting in a nonnavigable waterway except as approved by the department in a written license.

(c) Without a written license or notice to the department, a person may engage in prospecting in a nonnavigable waterway upon compliance with each of the following conditions:

- (1)** Lawful ingress to and egress from the waterway is obtained.
- (2)** Written permission is obtained from the property owner or owners.
- (3)** Prospecting is performed exclusively by one (1) or a combination of the following processes:
 - (A)** Without the use of equipment.
 - (B)** With the use of nonmotorized equipment, such as a pan, sluice box, or pick and shovel.
 - (C)** With the use of suction equipment, including motorized equipment, having a hand-operated nozzle that has an opening not larger than five (5) inches in diameter.
- (4)** No mercury or other chemicals are used to assist with the recovery of hard mineral resources.
- (5)** Activities occur exclusively between sunrise and sunset.
- (6)** No mussels are taken as prescribed by 312 IAC 9-9-3.
- (7)** No endangered species are taken as prescribed by IC 14-22-34-12.

(d) In addition to the waterways disqualified by 312 IAC 6-5-10(d), the following waterways do not qualify for prospecting under subsection (c):

- (1)** Cedar Creek in Allen County and Dekalb County from river mile 13.7 to the confluence with the St. Joseph River.
- (2)** Galien River in LaPorte County and its tributaries.
- (3)** North Fork of Wildcat Creek in Tippecanoe County and Carroll County from river mile 43.11 to river mile 4.82 and the South Fork of Wildcat Creek in Tippecanoe County from river mile 10.21 to river mile 0.00.
- (4)** Trail Creek in LaPorte County and its tributaries.
- (5)** Tributaries of the East Branch of the Little Calumet River.
- (6)** Tributaries of the St. Joseph River that have their confluences downstream of the Twin Branch Dam in Mishawaka.

(e) Nothing in this section is intended to modify the rights of riparian owners.

(Natural Resources Commission; 312 IAC 10-5-11; filed Nov 3, 2009, 3:35 p.m.: 20091202-IR-312090080FRA)

LSA Document #09-80(F)

Notice of Intent: 20090211-IR-312090080NIA

Proposed Rule: 20090722-IR-312090080PRA

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Small Business Regulatory Coordinator: Linnea Petercheff, Staff Specialist, Division of Fish and Wildlife, Department of Natural Resources, Indiana Government Center South, 402 West Washington Street, Room W273, Indianapolis, Indiana 46204, (317) 233-6527, lpetercheff@dnr.in.gov

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